

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3746 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI

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1. Whether Reporters of Local Papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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J N BUHECHA

Versus

STATE OF GUJARAT

Appearance:

MR DM THAKKAR for Mr PM Thakkar for Petitioner

Mr DN Patel, AGP, for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE S.M.SONI

Date of decision: 26/12/96

ORAL JUDGEMENT

The petitioner who is an unarmed head constable was refused voluntary retirement on the ground that he has not completed qualified service of 20 years.

According to the petitioner, he has completed 20 years of service whereas according to the department, period of suspension cannot be reckoned while calculating the qualifying service. As the petitioner was not permitted to retire voluntarily, the present petition came to be filed. After filing of the present petition 11 years have passed. Possibly, it appears that the petitioner might have reached superannuation age also or it may be short of a year or two. In any case, in the interests of the petitioner, it will be desirous to keep open for the petitioner to present his case before the authority to consider whether the period of suspension be treated as a period on duty and count it for the purpose of pension as considerable time has passed after filing of the petition and in view of the above observation of his about reaching or reaching the age of superannuation the petition has become practically infructuous. The petition is therefore dismissed as having become infructuous. However, it will be open for the petitioner to present his case before the respondent to consider his period of suspension as period on duty in view of the provisions of Rule 152 read with Rule 152A of the BCS Rules. Rule is discharged. No order as to costs.

(mohd)